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MAY 21 2012

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-2879

**DEBRA ELISABETH GRAVES-
MAGALLANES**

A C C U S A T I O N

8397 Visalia Street
Ventura, CA 93004

Psychiatric Technician License No. PT 21860

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs ("Board").

2. On or about August 11, 1982, the Board of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License Number PT 21860 to Debra Elisabeth Graves-Magallanes ("Respondent"). The Psychiatric Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

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4. Section 4520 of the Code provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

6. Section 490 of the Code states:

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.”

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1 7. Section 4521 of the Code states in pertinent part:

2 “The board may suspend or revoke a license issued under this chapter
3 [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the
4 following reasons:

5 (a) Unprofessional conduct, which includes but is not limited to any of
6 the following:

7 ...

8 (5) Use any controlled substance as defined in Division 10 (commencing
9 with Section 11000) of the Health and Safety Code, or any dangerous drug as defined
10 in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
11 injurious to himself or herself, any other person, or the public or to the extent that the
12 use impairs his or her ability to conduct with safety to the public the practice
13 authorized by his or her license.

14 (6) Be convicted of a criminal offense involving the falsification of
15 records concerning prescription, possession, or consumption of any of the substances
16 described in paragraphs (4) and (5), in which event the record of the conviction is
17 conclusive evidence of the conviction. The board may inquire into the circumstances
18 surrounding the commission of the crime in order to fix the degree of discipline.

19 (7) Be committed or confined by a court of competent jurisdiction for
20 intemperate use of or addiction to the use of any of the substances described in
21 paragraphs (4) and (5), in which event the court order of commitment or confinement
22 is prima facie evidence of the commitment or confinement.

23 ...

24 (d) Violating or attempting to violate, directly or indirectly, or assisting
25 in or abetting the violation of, or conspiring to violate any provision or terms of this
26 chapter.

27 ...

28 (f) Conviction of any offense substantially related to the qualifications,
functions, and duties of a psychiatric technician, in which event the record of the
conviction shall be conclusive evidence of the conviction. The board may inquire
into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline.”

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 2578, states:

“For the purposes of denial, suspension, or revocation of a license
pursuant to Division 1.5 (commencing with Section 475) of the Business and
Professions Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a licensed psychiatric technician if to a
substantial degree it evidences present or potential unfitness of a licensed psychiatric
technician to perform the functions authorized by his license in a manner consistent
with the public health, safety, or welfare. Such crimes or acts shall include but not be
limited to those involving the following:

1 (a) Procuring a license by fraud, misrepresentation, or mistake.

2 (b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

3 (c) Violating or attempting to violate, directly or indirectly, or assisting in
4 or abetting the violation of, or conspiring to violate any provision or term of Chapter
10, Division 2 of the Business and Professions Code.

5 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
6 whether a licensed physician or not, in the performance of or arranging for a violation
of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
7 Professions Code.

8 (e) Conviction of a crime involving fiscal dishonesty.

9 (f) Any crime or act involving the sale, gift, administration, or furnishing
10 of 'narcotics or dangerous drugs or dangerous devices' as defined in Section 4022 of
the Business and Professions Code."

11 **COST RECOVERY**

12 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Conviction of Substantially Related Crime)**

18 10. Respondent is subject to disciplinary action under section 4521, subdivision (f) and
19 section 490 of the Code in conjunction with California Code of Regulations, title 16, section 2578
20 in that Respondent was convicted of a crime substantially related to the qualifications, functions
21 and duties of a psychiatric technician, as follows:

22 11. On or about March 16, 2011, Respondent pled guilty to one misdemeanor count of
23 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or
24 drugs] in the criminal proceeding entitled *The People of the State of California v. Debra Graves*
25 *Magallanes* (Super. Ct. County of Ventura, 2011, Case No. 2011003548MA). As part of her
26 plea, Respondent admitted to driving with a Blood Alcohol Content ("BAC") of 0.15% or more
27 and to prior drunk driving incidents. The court sentenced Respondent to twenty five (25) days in
28

1 jail and to sixty (60) months probation, with terms and conditions. The circumstances underlying
2 the conviction are:

- 3 a. On or about January 29, 2011, at approximately 12:05 am, California Highway
4 Patrol ("CHP") officers responded to a dispatch call of a possible drunk driver.
- 5 b. Officers observed Respondent's vehicle cross over the double yellow center lines
6 and drive completely into the opposing lane. The vehicle proceeded to weave and
7 use the whole roadway (from the shoulder to the left of broken center lines).
- 8 c. Upon conducting a traffic stop, officers smelled a strong and distinct odor of an
9 alcoholic beverage emitting from Respondent's vehicle. Officers observed that
10 Respondent's eyes were red and glassy and her speech was extremely thick and
11 slurred. Officers also observed Respondent to be extremely unsteady on her feet.
- 12 d. Respondent admitted to drinking half of a glass of red wine a couple of hours prior
13 to the stop.
- 14 e. CHP officers asked Respondent to perform a series of Field Sobriety Tests
15 ("FSTs"). She was unable to perform the tests as explained and demonstrated.
- 16 f. Respondent submitted to a breath test at the scene, with results of 0.17% and
17 0.17% BAC.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct: Dangerous Use of Alcohol)**

20 12. Respondent is subject to disciplinary action under section 4521, subdivision (a)(5) of
21 the Code on the grounds of unprofessional conduct in that on or about January 29, 2011,
22 Respondent used alcoholic beverages to an extent and in a manner dangerous or injurious to
23 herself, others and the public when she consumed alcohol and drove her vehicle with a 0.17%
24 BAC. The conduct is described in more particularity in paragraphs 11 and 12, subdivisions (a)
25 through (f) above, inclusive and herein incorporated by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Conviction Involving Use of Alcohol)**

3 13. Respondent is subject to disciplinary action under section 4521, subdivision (a)(6) of
4 the Code on the grounds of unprofessional conduct in that Respondent was convicted of violating
5 Vehicle Code section 23152, subdivision (a), a criminal offense involving the consumption of
6 alcoholic beverages. The conviction is described in more particularity in paragraphs 11 and 12,
7 subdivisions (a) through (f), above, inclusive and herein incorporated by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct: Commitment for Intemperate Use of Alcohol)**

10 14. Respondent is subject to disciplinary action under section 4521, subdivision (a)(7) of
11 the Code on the grounds of unprofessional conduct in that on or about March 16, 2011,
12 Respondent was confined by a court of competent jurisdiction for intemperate use of alcoholic
13 beverages. The confinement is described in more particularity in paragraphs 11 and 12,
14 subdivisions (a) through (f), above, inclusive and herein incorporated by reference.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Violation of Psychiatric Technicians Law)**

17 15. Respondent is subject to disciplinary action under section 4521, subdivision (d) of the
18 Code in that Respondent violated provisions of the Psychiatric Technicians Law. The violations
19 are described in more particularity in paragraphs 11 through 15, above, inclusive and hereby
20 incorporated by reference.

21 **DISCIPLINARY CONSIDERATIONS**

22 16. To determine the degree of discipline, if any, to be imposed on Respondent,
23 Complainant alleges that:

- 24 a. On or about August 20, 2009, the Board issued a letter of reprimand to
25 Respondent, for a substantially related criminal conviction in 2007.
- 26 b. On or about November 7, 2007, Respondent pled guilty to one misdemeanor
27 count of violating Vehicle Code section 23152, subdivision (a) [driving under the
28 influence of alcohol or drugs] in the criminal proceeding entitled *The People of*

1 *the State of California v. Debra Magallanes* (Super. Ct. County of Orange, 2007,
2 Case No. 07WM09595). The court sentenced Respondent to three (3) years
3 probation with terms and conditions.
4 c. The circumstances underlying the conviction are that on or about July 17, 2007, at
5 approximately 1:38 a.m., Fountain Valley Police Officers conducted a traffic stop
6 of Respondent's vehicle. Respondent admitted to officers that she drank two (2)
7 Coors and one (1) Riesling earlier that evening. Respondent failed to
8 satisfactorily perform FSTs. A subsequent blood test indicated that Respondent
9 had a 0.108 and 0.109% BAC.

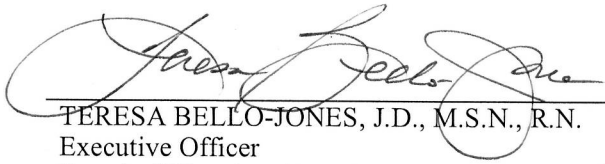
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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
4 issue a decision:

- 5 1. Revoking or suspending Psychiatric Technician License Number PT 21860, issued to
6 Debra Elisabeth Graves-Magallanes;
- 7 2. Ordering Debra Elisabeth Graves-Magallanes to pay the Board of Vocational Nursing
8 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3;
- 10 3. Taking such other and further action as deemed necessary and proper.
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- 12

13 DATED: May 21, 2012

14 
TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Board of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
State of California
Complainant

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